

1 MORGAN, LEWIS & BOCKIUS LLP
Eric Meckley, Bar No. 168181
2 Sarah Zenewicz, Bar No. 258068
One Market
3 Spear Street Tower
San Francisco, CA 94105-1596
4 Tel: +1.415.442.1000
Fax: +1.415.442.1001
5 eric.meckley@morganlewis.com
sarah.zenewicz@morganlewis.com
6

7 MORGAN, LEWIS & BOCKIUS LLP
Claire Lesikar, Bar No. 311180
1400 Page Mill Road
8 Palo Alto, CA 94304
Tel: +1.650.843.4000
9 Fax: +1.650.843.4001
claire.lesikar@morganlewis.com
10

11 Attorneys for Defendant
ARAMARK SERVICES, INC.
12

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15

16 LAWRENCE WAYNE KELLY JR., an
individual,
17 Plaintiff,
18 vs.
19

20 ARAMARK SERVICES, INC., a California
Corporation; DOE 1, an individual; and DOES
2 through 50, inclusive,
21 Defendants.
22

Case No. 3:22-cv-05263

**DEFENDANT ARAMARK SERVICES,
INC.'S NOTICE OF REMOVAL**

[28 U.S.C. §§ 1332(A), 1441, 1446]

1 **TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF**
 2 **CALIFORNIA, AND TO PLAINTIFF LAWRENCE WAYNE KELLY JR. AND HIS**
 3 **ATTORNEYS OF RECORD:**

4 **PLEASE TAKE NOTICE THAT** pursuant to 28 U.S.C. §§ 1332(a), 1441, and 1446,
 5 Defendant Aramark Services, Inc. (“Defendant” or “Aramark”) hereby removes the above-
 6 entitled action from the Superior Court of the State of California for the County of Alameda to the
 7 United States District Court for the Northern District of California. This Court has original
 8 subject matter jurisdiction over the claims of Plaintiff Lawrence Wayne Kelly Jr. (“Plaintiff” or
 9 “Kelly”) under 28 U.S.C. § 1332(a), because the amount in controversy exceeds \$75,000 and
 10 there is complete diversity of citizenship between the parties.

11 In support of this removal, Aramark states the following:

12 **I. PLEADINGS, PROCESS, AND ORDERS**

13 1. On August 12, 2022, Plaintiff filed an unverified complaint for damages in the
 14 Superior Court of the State of California, for the County of Alameda, entitled *Lawrence Wayne*
 15 *Kelly Jr. v. Aramark Services, Inc.*, Case No. 22CV016120 (the “Complaint”). The Complaint
 16 alleges five causes of action: (1) Age Discrimination (Gov. Code § 12940, *et. seq.*); (2) Failure to
 17 Prevent Discrimination and Harassment (Gov. Code § 12940(k)); (3) Wrongful Termination in
 18 Violation of Public Policy; (4) Intentional Infliction of Emotional Distress; (5) Unfair
 19 Competition (Bus. & Prof. Code § 17200, *et. seq.*).

20 2. On August 16, 2022, Plaintiff served a document titled “First Amended
 21 Complaint” (“FAC”) on Defendant.¹ True and correct copies of the Summons, First Amended
 22 Complaint, the original filed Complaint, and all documents served with the FAC are attached as
 23 **Exhibit A**.

24 3. On September 14, 2022, Defendant filed and served its Answer to the Plaintiff’s
 25 Complaint. A true and correct copy of the Answer to the Complaint is attached as **Exhibit B**.

26 4. **Exhibits A** and **B** constitute all the pleadings, process, and orders served upon or

27 ¹ Despite serving a putative First Amended Complaint, as of September 15, 2022, Plaintiff’s First Amended
 28 Complaint does not appear on the court’s docket for this case. Plaintiff’s FAC and Complaint appear to be
 identical.

1 by Defendant in the Superior Court action.

2 **II. REMOVAL IS TIMELY**

3 5. This Notice of Removal is filed timely, pursuant to 28 U.S.C. § 1446(b), because
 4 Defendant filed it within thirty days of completion of service on Defendant. No previous Notice
 5 of Removal has been filed or made with this Court for the relief sought herein.

6 **III. DIVERSITY JURISDICTION EXISTS**

7 6. This action is a civil action over which this Court has original diversity jurisdiction
 8 pursuant to 28 U.S.C. § 1332. Removal to this Court is proper under the provisions of 28 U.S.C.
 9 §§ 1441(a) and (b) because the action involves citizens of different states the amount in
 10 controversy exceeds \$75,000.

11 **A. Complete Diversity of Citizenship Exists Between the Parties.**

12 7. A case may be heard in federal court under diversity jurisdiction if there is
 13 complete diversity, i.e., all plaintiffs are diverse from all defendants. 28 U.S.C. § 1332(a). A
 14 defendant may remove an action to federal court under 28 U.S.C. § 1332 provided no defendant is
 15 a citizen of the same state in which the action was brought. 28 U.S.C. § 1441(a)–(b). The
 16 citizenship of improperly and fraudulently joined defendants should be disregarded for removal
 17 purposes. *McCabe v. Gen. Food Corp.*, 811 F.2d 1336, 1339 (9th Cir. 1987). Here, all
 18 requirements are met because Plaintiff is a citizen of California and Defendant is a citizen of
 19 Delaware and Pennsylvania.

20 **1. Plaintiff Is a Citizen of California.**

21 8. “An individual is a citizen of the state in which he is domiciled” *Boon v.*
Allstate Ins. Co., 229 F. Supp. 2d 1016, 1019 (C.D. Cal. 2002) (citing *Kanter v. Warner-Lambert*
Co., 265 F.3d 853, 857 (9th Cir. 2001)). For purposes of diversity jurisdiction, citizenship is
 24 determined by the individual’s domicile at the time the lawsuit is filed. *Lew v. Moss*, 797 F.2d
 25 747, 750 (9th Cir. 1986). Evidence of continuing residence creates a presumption of domicile.
Washington v. Hovensa LLC, 652 F.3d 340, 345 (3rd Cir. 2011); *State Farm Mut. Auto. Ins. Co.*
 27 *v. Dyer*, 19 F.3d 514, 519 (10th Cir. 1994). Once the removing party produces evidence
 28 supporting that presumption, the burden shifts to the other party to come forward with contrary

1 evidence, if any, in order to dispute domicile. *Id.*

2 9. At the time Plaintiff filed this civil action, Plaintiff was a citizen of the State of
 3 California. Exh. A, Complaint at ¶ 6. Plaintiff was employed by Aramark in California from
 4 around 1988 to 2020. *Id.* at ¶¶ 6, 14, 17. Nothing in Plaintiff's Complaint suggest that he is now,
 5 or has been a citizen of the state of Pennsylvania or Delaware.

6 **2. Defendant Is a Citizen of Pennsylvania and Delaware, Not California.**

7 10. For diversity purposes, a corporation is deemed to be a citizen of any state in which it
 8 has been incorporated and of any state where it has its principal place of business. 28 U.S.C.
 9 § 1332(c)(1). The "principal place of business" for the purpose of determining diversity subject
 10 matter jurisdiction refers to "the place where a corporation's officers direct, control, and coordinate
 11 the corporation's activities . . . [I]n practice it should normally be the place where the corporation
 12 maintains its headquarters—provided that the headquarters is the actual center of direction, control,
 13 and coordination, i.e., the 'nerve center,' and not simply an office where the corporation holds its
 14 board meetings . . ." See *Hertz Corp. v. Friend*, 559 U.S. 77, 92-93 (2010).

15 11. Defendant is now and, prior to and after the commencement of this action on August
 16 12, 2022, has been a corporation organized and existing under and by virtue of the laws of Delaware.
 17 Currently and prior to and since the commencement of this action, the Company has had its corporate
 18 headquarters and principal place of business in Philadelphia, Pennsylvania. Philadelphia,
 19 Pennsylvania is where direction, control, and coordination for the Company and executive functions
 20 take place. The greater part of the Company's administrative functions (including corporate human
 21 resources, payroll, benefits, Information Technology, corporate finance, production operations, and
 22 business strategy) are conducted in Philadelphia, Pennsylvania, and the respective managers for these
 23 departments work in Philadelphia, Pennsylvania. As such, corporate policies, including those
 24 concerning discrimination, harassment and retaliation, and recordkeeping related to hours worked and
 25 pay have been established by the Company's leaders based in Philadelphia.

26 12. Defendant is therefore a citizen of the State of Delaware and the Commonwealth of
 27 Pennsylvania for purposes of determining diversity jurisdiction. 28 U.S.C. § 1332(c)(1). As a result,
 28 Defendant is not now, and was not at the time of the filing of the Complaint, a citizen and/or resident

1 of the State of California for purposes of determining diversity jurisdiction.

2 13. In compliance with 28 U.S.C. § 1441(b), none of the “parties in interest properly
 3 joined and served as defendants is a citizen of the State in which [this] action is brought.” The
 4 inclusion of “Doe” Defendants in Plaintiff’s state court complaint has no effect on removability.
 5 *Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 690-91 (9th Cir. 1998); 28 U.S.C. § 1441(a) (stating
 6 that for purposes of removal, the citizenship of Defendant sued under fictitious names shall be
 7 disregarded). In determining whether diversity of citizenship exists, only the named defendants are
 8 considered.

9 14. Based on the foregoing, complete diversity exists because Plaintiff is a citizen of
 10 California and Defendant is a citizen of Delaware and Pennsylvania.

11 **B. The Amount Plaintiff Places in Controversy Exceeds \$75,000.**

12 15. Although the Complaint does not allege any amount of damages as to any of his
 13 claims, removal is proper if, from the allegations of the Complaint and the Notice of Removal, it is
 14 more likely than not that the amount in controversy exceeds \$75,000. *Sanchez v. Monumental Life*
 15 *Ins. Co.*, 102 F.3d 398, 403-04 (9th Cir. 1996).

16 16. Defendant is informed that the amount in controversy exceeds the sum or value of
 17 \$75,000, exclusive of interests and costs. Plaintiff alleges in his Complaint that Defendant terminated
 18 his employment based on his age. Plaintiff seeks to recover “compensatory damages . . . including
 19 but not limited to back pay, front pay, loss of earnings and employee benefits and damages for
 20 emotional distress . . . ;” “restitution for unfair competition . . . including disgorgement of profits”;
 21 “general and special damages”; “pre-judgment and post-judgment interest”; “punitive and exemplary
 22 damages”; “attorneys’ fees”; “costs of suit”; and “other relief the court may deem just and proper.”
 23 Exh. A, Complaint, ¶¶ 57-64. Were Plaintiff to prevail in this action, the damages could exceed
 24 \$75,000.

25 **1. Plaintiff’s Claim for Loss of Earnings Places at Least \$212,588.80 in**
 26 **Controversy.**

27 17. At the time of his termination, Plaintiff received an hourly pay rate of \$22.52.
 28 Declaration of Bryan Mohseni in Support of Defendant’s Notice of Removal, ¶ 3. Not counting

1 overtime or other pay, this comes out to \$3,603.20 per month. Defendant terminated Plaintiff's
 2 employment on February 13, 2020. Exh. A, Complaint at ¶ 17. A jury trial in this case likely
 3 would not occur for over two years from the date of removal. See United States District Courts –
 4 National Judicial Caseload Profile for the Northern District of California,
 5 https://www.uscourts.gov/sites/default/files/data_tables/fcms_na_distprofile0630.2020.pdf
 6 (reflecting a median time of approximately 29.3 months from filing date to trial date in civil cases
 7 in the Northern District of California). Twenty-nine months from August 12, 2022—the date
 8 Plaintiff filed his Complaint—is January 12, 2025 giving a total amount of time between his
 9 termination and trial of approximately 59 months.

10 18. At the time of trial, Plaintiff's lost wages claim would be approximately
 11 \$212,588.80 (\$3,603.20 x 59). *See, e.g., Melendez v. HMS Host Family Rest., Inc.*, No. CV 11-
 12 3842, 2011 WL 3760058, at *2 (C.D. Cal. Aug. 25, 2011) (including projected lost wages from
 13 alleged adverse employment action to anticipated date of judgment in amount in controversy
 14 calculation); *Rivera v. Costco Wholesale Corp.*, No. C 08-02202, 2008 WL 2740399, at *3 (N.D.
 15 Cal. July 11, 2008) (considering “lost wages and benefits [that] may accrue” after removal);
 16 *Celestino v. Renal Advantage Inc.*, No. C 06-07788, 2007 WL 1223699, at *4 (N.D. Cal. Apr. 24,
 17 2007) (including future lost income in amount in controversy calculation).

18 19. In the alternative, if Plaintiff's lost wages is limited to the time between Plaintiff's
 19 termination and when Plaintiff filed his original Complaint on August 12, 2022, Plaintiff's lost
 20 wages claim would be approximately \$190,969.60 (\$3,603.20 x 53).

21 **2. Plaintiff Alleges Emotional Distress Damages**

22 20. Plaintiff also alleges emotional distress damages. *See, e.g., Exh. A, Complaint,* ¶¶
 23 29, 36, 43, 46, 57. In determining whether the jurisdictional minimum is met, courts consider all
 24 recoverable damages, including emotional distress damages. *Hunt v. Wash. State Apple Advert.*
 25 *Comm'n*, 432 U.S. 333, 347-48 (1977), superseded by statute on other grounds; *Galt G/S v. JSS*
 26 *Scandinavia*, 142 F.3d 1150, 1155-56 (9th Cir. 1998). Indeed, numerous California Courts have
 27 awarded more than \$75,000 in emotional distress damages alone. *See, e.g., Keiffer v. Bechtel*
 28 *Corp.*, 65 Cal. App. 4th 893, 895 (1998) (California Court of Appeal upheld jury award in excess

1 of \$75,000.00 for emotional distress damages); *Satrap v. Pac. Gas & Elec. Co.*, 42 Cal. App. 4th
 2 72, 76 (1996) (jury award in excess of \$75,000.00 in non-economic damages was upheld).
 3 Accordingly, it is reasonable to assume that Plaintiff seeks in excess of \$75,000 for alleged
 4 emotional distress damages alone.

5 **3. Plaintiff's Claim for Punitive Damages Places Additional Amounts in**
 6 **Controversy.**

7 21. Plaintiff also requests an unspecified amount in punitive damages related to every
 8 claim. See Exh. A, Complaint, ¶¶ 30, 38, 43, 47, 61. Plaintiff's claims for punitive damages are
 9 part of the amount in controversy when determining diversity jurisdiction. *Gibson v. Chrysler*
 10 *Corp.*, 261 F.3d 927, 945 (9th Cir. 2001). California juries have returned verdicts with substantial
 11 punitive damage awards in employment discrimination actions. *See Simmons v. PCR Tech.*, 209
 12 F. Supp. 2d 1029, 1033 (N.D. Cal. 2002) (“the jury verdicts in these cases amply demonstrate the
 13 potential for large punitive damage awards in employment discrimination cases”); *Ko v. The*
 14 *Square Group, LLC*, Case No. BC 487739, 2014 WL 3555573 (Cal. Super. Ct. June 17, 2014)
 15 (disability discrimination case resulting in punitive damages award of \$500,000); *see also Aucina*
 16 *v. Amoco Oil Co.*, 871 F. Supp. 332, 334 (S.D. Iowa 1994) (“Because the purpose of punitive
 17 damages is to capture a defendant’s attention and deter others from similar conduct, it is apparent
 18 plaintiff’s claim for punitive damages alone might exceed [the jurisdictional amount].”). Thus,
 19 Plaintiff’s claim for punitive damages places an even greater amount in controversy.

20 22. Plaintiff also seeks to recover an unspecified amount of attorneys’ fees. Exh. A.,
 21 Complaint ¶ 62. Courts have held that an award of attorneys’ fees, if such fees are authorized, may
 22 be considered for purposes of calculating the amount in controversy. *See, e.g., Galt G/S*, 142 F.3d at
 23 1155-56 (9th Cir. 1998) (“We hold that where an underlying statute authorizes an award of attorneys’
 24 fees, either with mandatory or discretionary language, such fees may be included in the amount in
 25 controversy.”); *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 697-98 (9th Cir. 2007) (attorneys’
 26 fees are included in the calculation of the amount in controversy under 28 U.S.C. § 1332(a)); *Sanchez*
 27 *v. Wal-Mart Stores, Inc.*, No. S-06-cv-2573, 2007 WL 1345706, at *2 (E.D. Cal. May 8, 2007)
 28 (“Attorney’s fees, if authorized by statute or contract, are also part of the calculation”). The total

1 amount of attorneys' fees that could accrue during the course of litigation are considered. *Lippold v.*
 2 *Godiva Chocolatier, Inc.*, No. C 10-00421, 2010 WL 1526441, at *3–4 (N.D. Cal. Apr. 15, 2010) (“a
 3 reasonable estimate of attorneys fees likely to be expended” should be included in calculating the
 4 amount in controversy); *accord Pulera v. F & B, Inc.*, No. 2:08-cv-00275 – MCEDAD, 2008WL
 5 3863489, at *4–5 (E.D. Cal. Aug. 19, 2008); *Celestino*, 2007 WL 1223699 at *4; *Simmons*, 209 F.
 6 Supp. 2d at 1034–35 (N.D. Cal. 2002); *Brady v. Mercedes-Benz*, 243 F. Supp. 2d 1004, 1010–11
 7 (N.D. Cal. Jan. 12, 2002).

8 23. Here, Plaintiff brings claims under the Fair Employment and Housing Act, which
 9 allows a “prevailing party” to recover reasonable attorneys’ fees. Cal. Gov. Code § 12965(b) (“[T]he
 10 court, in its discretion, may award to the prevailing party . . . reasonable attorney’s fees and costs,
 11 including expert witness fees”); *Simmons*, 209 F. Supp. 2d at 1035 (“The court notes that in its
 12 twenty-plus years’ experience, attorneys’ fees in individual discrimination cases often exceed the
 13 damages.”).

14 24. Notably, Plaintiff’s counsel, Shaun Setareh, has filed fee motions that report his
 15 hourly rate at \$750 to \$850 and his associates’ hourly rates at \$350 to \$700. Request for Judicial
 16 Notice, Exs. A-C. Conservatively assuming that Mr. Setareh’s associates perform 75% of the work,
 17 attorneys’ fees would total \$75,000 after 132 hours of work ((\\$525 average associate rate x 108
 18 hours) + (\\$800 average Setareh hourly rate x 24 hours) = \\$75,900). Plaintiff’s counsel would likely
 19 exceed this amount during just the pretrial phase of litigation.

20 25. Thus, the amount of attorneys’ fees incurred by Plaintiff in connection with
 21 prosecuting the instant action would increase the above figures even more, and, when combined with
 22 the other damages, exceed the jurisdictional threshold of this Court.

23 26. While Defendant denies any and all liability to Plaintiff, based on a conservative, good
 24 faith estimate of the value of the alleged damages in this action (lost wages, emotional distress,
 25 punitive damages, and attorneys’ fees), the amount in controversy in this case well exceeds \$75,000,
 26 exclusive of interest and costs. *See Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 376–77
 27 (9th Cir. 1997) (holding that where a complaint does not allege a specific dollar amount, the case is
 28 removable if the removing defendant shows by a preponderance of the evidence that the jurisdictional

amount is present); *see also Simmons*, 209 F. Supp. 2d at 1031–35 (holding that Plaintiff’s damage claim, including lost wages, medical expenses, emotional distress and attorneys’ fees, was enough to put the amount in controversy above \$75,000).

IV. THE OTHER PREREQUISITES FOR REMOVAL HAVE BEEN SATISFIED

27. Venue is proper in the Northern District of California pursuant to 28 U.S.C. § 1441(a) because this district embraces the county—Alameda—in which the removed action has been pending.

28. Defendant will promptly serve Plaintiff with this Notice of Removal and will promptly file a copy of this Notice of Removal with the clerk of the state court in which the action is pending, as required under 28 U.S.C. § 1446(d).

V. CONCLUSION

29. Defendant respectfully requests that this action be removed from the Superior Court of the State of California for the County of Alameda to the United States District Court for the Northern District of California, and that all future proceedings in this matter take place in the United States District Court for the Northern District of California.

30. If any question arises as to the propriety of the removal of this action, Defendant requests the opportunity to present a brief and oral argument in support of their position that this case is removable.

Dated: September 15, 2022

MORGAN, LEWIS & BOCKIUS LLP

By /s/*Eric Meckley*

Eric Meckley
Sarah Zenewicz
Claire Lesikar
Attorneys for Defendant
ARAMARK SERVICES, INC.

EXHIBIT A


**CT Corporation
Service of Process Notification**

08/16/2022

CT Log Number 542131717

Service of Process Transmittal Summary

TO: Charles J Reitmeyer, Vice President & Assoc. General Counsel
 Aramark
 2400 MARKET ST FL 8
 PHILADELPHIA, PA 19103-3041

RE: **Process Served in California**

FOR: Aramark Services, Inc. (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Re: LAWRENCE WAYNE KELLY JR., an individual // To: Aramark Services, Inc.

DOCUMENT(S) SERVED: Summons, First Amended Complaint, Exhibit(s)

COURT/AGENCY: Alameda County - Superior Court, CA, CA
 Case # 22CV016120

NATURE OF ACTION: Employee Litigation - Wrongful Termination - On or around 02/13/2020

PROCESS SERVED ON: CT Corporation System, GLENDALE, CA

DATE/METHOD OF SERVICE: By Process Server on 08/16/2022 at 02:18

JURISDICTION SERVED: California

APPEARANCE OR ANSWER DUE: Within 30 days after service

ATTORNEY(S)/SENDER(S): Shaun Setareh
 SETAREH LAW GROUP
 9665 Wilshire Boulevard, Suite 430
 Beverly Hills, CA 90212
 310-888-7771

ACTION ITEMS: CT has retained the current log, Retain Date: 08/17/2022, Expected Purge Date:
 08/22/2022
 Image SOP
 Email Notification, Charles J Reitmeyer charles.reitmeyer@morganlewis.com
 Email Notification, Denise Bolc bolc-denise@aramark.com
 Email Notification, Amy Golembo golembo-amy@aramark.com

REGISTERED AGENT CONTACT: CT Corporation System
 330 N BRAND BLVD
 STE 700
 GLENDALE, CA 91203
 877-564-7529
 MajorAccountTeam2@wolterskluwer.com



**CT Corporation
Service of Process Notification**

08/16/2022

CT Log Number 542131717

The information contained in this Transmittal is provided by CT for quick reference only. It does not constitute a legal opinion, and should not otherwise be relied on, as to the nature of action, the amount of damages, the answer date, or any other information contained in the included documents. The recipient(s) of this form is responsible for reviewing and interpreting the included documents and taking appropriate action, including consulting with its legal and other advisors as necessary. CT disclaims all liability for the information contained in this form, including for any omissions or inaccuracies that may be contained therein.



PROCESS SERVER DELIVERY DETAILS

Date: Tue, Aug 16, 2022
Server Name: Jimmy Lizama

Entity Served	ARAMARK SERVICES, INC.
Case Number	22CV016120
Jurisdiction	CA

Inserts



SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:**(AVISO AL DEMANDADO):**

ARAMARK SERVICES, INC, a California Corporation; DOE 1, an individual; and DOES 2 through 50, inclusive

YOU ARE BEING SUED BY PLAINTIFF:**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

LAWRENCE WAYNE KELLY JR., an individual

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED

Superior Court of California
County of Alameda

08/12/2022

Chad Finke, Executive Officer / Clerk of the Court
By: A. Linhares Deputy

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.**

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): Hayward Hall of Justice
24405 Amador St.
Hayward, CA 94544

CASE NUMBER:
(Número del Caso):

22CV0161 20

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Shaun Setareh, Esq., 9665 Wilshire Blvd., Suite 430, Beverly Hills, California 90212, (310) 888-7771

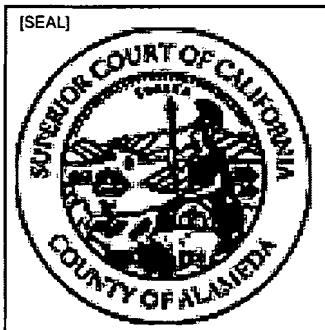
DATE: 08/12/2022 Clerk, by (Secretario) , Deputy
(Fecha) Chad Finke, Executive Officer / Clerk of the Court A. Linhares (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify): ARAMARK SERVICES, INC., a California Corporation
 under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
4. by personal delivery on (date):



1 Shaun Setareh (SBN 204514)
2 shaun@setarehlaw.com
3 Jose Maria D. Patino, Jr. (SBN 270194)
4 jose@setarehlaw.com
5 Maxim Gorbunov (SBN 343128)
6 maxim@setarehlaw.com)
SETAREH LAW GROUP
9665 Wilshire Boulevard, Suite 430
Beverly Hills, California 90212
Telephone (310) 888-7771
Facsimile (310) 888-0109

7 Attorneys for Plaintiff
LAWRENCE WAYNE KELLY JR.

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF ALAMEDA

12 LAWRENCE WAYNE KELLY JR., an individual,

Plaintiff,

Defendants.

Case No.: 22CV016120

FIRST AMENDED COMPLAINT FOR:

1. Age Discrimination (Gov. Code. § 12940, *et seq.*)
 2. Failure to Prevent Discrimination and Harassment (Gov. Code § 12940(k))
 3. Wrongful Termination in Violation of Public Policy;
 4. Intentional Infliction of Emotional Distress
 5. Unfair Competition (Bus. & Prof. Code § 17200, *et seq.*)

DEMAND FOR JURY TRIAL

1 Plaintiff LAWRENCE WAYNE KELLY JR., (hereinafter "Plaintiff") alleges as follows:

2 **INTRODUCTION**

3 1. Plaintiff brings this action against Defendants ARAMARK SERVICES, INC., a
 4 California corporation (hereinafter "Aramark"); DOE 1, an individual; and DOES 2 through 50,
 5 inclusive (collectively "Defendants") for alleged violations of Government Code section 12940,
 6 *et seq.*, and the Business and Professions Code section 17200, *et seq.*

7 2. Based on the allegations herein, Plaintiff seeks general, special, compensatory,
 8 actual, consequential, incidental, and punitive damages and interest thereon, attorneys' fees, costs
 9 of suit, injunctive relief, and other remedies discussed below.

10 **JURISDICTION AND VENUE**

11 3. This Court has subject matter jurisdiction to hear this case because the Plaintiff is
 12 informed and believes that the monetary damages and restitution sought in this complaint for
 13 Defendants' conduct exceeds the minimal jurisdictional limits of the Superior Court of the State of
 14 California.

15 4. Venue is proper in Alameda pursuant to Code of Civil Procedure sections 395(a)
 16 and 395.5 in that liability arose there, because at least some of the transactions that are the subject
 17 matter of this Complaint occurred therein and/or each defendant is found, maintains offices,
 18 transacts business, and/or has an agent therein.

19 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

20 5. Prior to the filing of this civil complaint, Plaintiff filed an administrative complaint
 21 against each named defendant with the California Department of Fair Employment and Housing
 22 (DFEH) pursuant to California Government Code section 12900, *et seq.*, alleging the claims
 23 described in this complaint. On August 15, 2022, the DFEH issued a "right to sue" letter. A true
 24 and correct copy of the administrative complaint and the "right to sue" letter is attached as Exhibit
 25 A. All conditions precedent to the filing of this complaint have been fulfilled. This action is filed
 26 within one year of the date that the DFEH issued its right to sue letter.

27 ///

28 ///

THE PARTIES

2 6. At all times herein mentioned, and at the time the causes of action arose, Plaintiff
3 LAWRENCE WAYNE KELLY JR., was an individual residing in the State of California, County
4 of San Benito.

5 7. At all times mentioned herein, Defendant ARAMARK SERVICES, INC., a
6 California corporation, was and is doing business in the State of California, County of Alameda.

7 8. At all times mentioned herein, Plaintiff is informed and believes, and based thereon
8 alleges, that Defendant DOE 1, in individual, was an individual residing in the State of California
9 who was employed by Aramark and placed in charge of investigating the workplace vending
10 machine discrepancies attributed to Plaintiff.

11 9. Plaintiff is unaware of the true names and capacities of the defendants sued herein
12 as DOES 1 through 50, inclusive, and for that reason sues these defendants by such fictitious
13 names under Code of Civil Procedure section 474. Plaintiff will file and serve an amendment to
14 this Complaint alleging the true names and capacities of these fictitiously named defendants when
15 such true names and capacities become known to Plaintiff.

16 10. Plaintiff is informed and believes, and based thereon alleges, that each of the
17 fictitiously named defendants is responsible in some manner for, and proximately caused, the
18 harm and damages alleged herein below.

19 11. Hereinafter in this Complaint, unless otherwise specified, reference to a defendant
20 or defendants shall refer to all defendants, and each of them. ARAMARK SERVICES, INC., a
21 California corporation, DOE 1, an individual, and DOES 2 through 50, inclusive, shall hereinafter
22 be collectively referred to as "Defendants."

23 12. Plaintiff is informed and believes, and based thereon alleges, that each of the
24 defendants named herein acted as the employee, agent, spouse, partner, alter-ego, and/or joint-
25 venturer, of each of the other defendants named herein and, in doing the acts and in carrying out
26 the wrongful conduct alleged herein, each of the defendants acted within the scope of its
27 relationship with and with the permission, consent, and ratification of each of the other defendants
28 named herein.

13. Plaintiff is informed and believes and thereon allege that Defendants, and each of them, exercised control over the wages, hours or working conditions of Plaintiff, or suffered or permitted Plaintiff, to work, or engaged, thereby creating a common law employment relationship, with Plaintiff. Therefore, Defendants, and each of them, employed or jointly employed Plaintiff.

FACTUAL BACKGROUND

14. Plaintiff is a 53-year-old man who was hired by Defendants in or around 1988 as a driver. Plaintiff was a hardworking and steadfast employee, who, for over three decades, performed his job duties competently and efficiently, within the Defendants' rules, requirements, and policies.

15. Plaintiff accrued retirement benefits throughout his employment with Aramark. These benefits were provided through the Western Conference of Teamsters Pension Trust. Plaintiff had two more years of service before his pension was fully vested and he could retire.

16. At one point in his employment with Defendant, Plaintiff was promoted to a management position, but upon discovering that accrual of his retirement benefits was paused due to managers not being eligible for benefits, Plaintiff elected to go back to being a driver for Defendant.

17. On or around February 13, 2020, Plaintiff was called into a room by Doe 1 where two other persons were waiting. Doe 1 accused Plaintiff of theft and asked the other two persons to count money from a bag which Doe 1 claimed were from a vending machine Plaintiff serviced. When the count was complete, Plaintiff asked for details regarding how much money was missing and from which machine, but Doe 1 was unable to provide him with any information, instead telling Plaintiff that he doesn't know. Plaintiff asked a few more times, only to receive the same response. Plaintiff was then escorted by a manager through the building and sent home and told that Defendant was going to investigate. This was approximately two weeks before his thirty-second anniversary as an employee of Aramark. After this incident, Defendants abruptly terminated Plaintiff's employment without previous notice.

18. Before this incident, Plaintiff had never had any allegations of theft or dishonesty in his over thirty years on the job with Aramark.

19. Plaintiff continually asked Defendants for specific details about this wild accusation, but Defendants refused to provide any information and instead stated that they were going to conduct an investigation regarding the possible discrepancy.

20. He was one of several employees, including his supervisor, who had keys and access to each machine that was supposedly missing money. Defendants never informed Plaintiff of the amount of money missing nor of the count made afterwards by investigators of the money recovered from the machine in question.

21. Despite his insistence, Plaintiff was not provided evidence suggesting he was responsible for any monetary discrepancy in the vending machines under investigation.

22. Plaintiff is informed and believes that he was wrongfully terminated on the basis of his age and in interference with his pension benefits.

FIRST CAUSE OF ACTION

AGE DISCRIMINATION IN VIOLATION OF GOV. CODE § 12940, ET SEQ.

(Against All Defendants)

23. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in full herein.

24. At all times herein mentioned the California Fair Employment and Housing Act, California Government Code Section 12940 *et seq.* ("FEHA") was in full force and effect and was binding on Defendants, who each regularly employed five or more persons.

25. During Plaintiff's employment with Defendants, Defendants, through its supervisors, engaged in actions that had a negative impact on the treatment of employees who were more than 40 years old. Specifically, Defendants discharged older employees with greater frequency than younger employees, hired fewer employees who were older than 40, and gave better jobs and benefits to younger employees. Defendants had a pattern and practice of such unlawful hiring and firing practices.

26. Plaintiff was a qualified employee at the time his employment was terminated, he was more than 40 years old, and based on information and belief Plaintiff alleges that he was discriminated against on the basis of his age.

1 27. On the basis of the above, Plaintiff believes and alleges that his age was a
2 substantial motivating factor in Defendants' termination of his employment.

3 28. As a direct and proximate cause of Defendants' conduct, Plaintiff has suffered and
4 will continue to suffer damages in an amount within the jurisdiction of this court, the exact amount
5 to be proven at trial.

6 29. As a further direct and legal result of the acts and conduct of Defendants, Plaintiff
7 has been caused to, and did, suffer and continues to suffer severe emotional and mental distress
8 and anguish, humiliation, embarrassment, anger, shock, pain, discomfort, and anxiety, all of which
9 is substantial and enduring. The exact nature and extent of these injuries is presently unknown to
10 Plaintiff, who will pray leave of court to assert the same when they are ascertained.

11 30. The aforementioned acts of Defendants were willful, wanton, malicious,
12 intentional, oppressive, and despicable, and were done in willful and conscious disregard of the
13 rights of Plaintiff, and were done by managerial agents and employees of Defendants, or with the
14 express knowledge, consent, and ratification of managerial employees of Defendants, and thereby
15 justify the awarding of punitive and exemplary damages in an amount to be determined at the time
16 of trial.

SECOND CAUSE OF ACTION

FAILURE TO PREVENT DISCRIMINATION AND HARASSMENT IN VIOLATION OF

GOV. CODE § 12940(k)

(Against All Defendants)

21 31. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
22 full herein.

23 32. At all times mentioned herein, California Government Code § 12940 *et seq.* was in
24 full force and effect and binding on Defendants. These sections require Defendants to take
25 reasonable steps to prevent discrimination from occurring.

26 33. As alleged herein, Plaintiff suffered unlawful discrimination and harassment at the
27 hands of Defendants.

34. Defendants, and each of them, failed to take all reasonable steps to prevent such

1 harassment and discrimination in violation of Government Code § 12940(k).

2 35. Defendants failed to take appropriate and/or reasonable steps to train and/or
3 monitor its employees, supervisors and/or managers regarding disability discrimination by failing
4 to enforce a policy against unlawful discrimination, and failing to take prompt and appropriate
5 disciplinary action against the perpetrators of discrimination.

6 36. As a direct and proximate result of Defendants' failure to take all reasonable steps
7 to prevent harassment and discrimination, Plaintiff has suffered and will continue to suffer
8 damages in an amount within the jurisdiction of this Court, the exact amount to be proven at trial.
9 Such damages include loss of salary and other valuable employment benefits, prejudgment interest
10 and interest on the sum of damages at the legal rate, and other consequential damages, including
11 damages for shame, humiliation, mental anguish, and emotional distress caused by the conduct of
12 Defendants and each of them.

13 37. In addition, pursuant to Government Code § 12965(b), Plaintiff is entitled to his
14 attorneys' fees in prosecuting this lawsuit.

15 38. Because the wrongful acts against Plaintiff were carried out, authorized, or ratified
16 by Defendants' directors, officers and/or managing agents, acting with malice, oppression or
17 fraud, or were deliberate, willful, and in conscious disregard of the probability of causing injury to
18 Plaintiff, as reflected by the actions as described earlier in this Complaint, Plaintiff seeks punitive
19 damages against Defendants, and each of them, in order to deter them from such and similar
20 conduct in the future.

THIRD CAUSE OF ACTION

WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

(Against All Defendants)

24 39. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
25 full herein.

26 40. Plaintiff's termination was wrongful in that it violated the fundamental public
27 policies of California that prohibit discrimination, harassment, and retaliation on the basis of: age
28 as discussed above.

41. Defendants discharged Plaintiff in violation of the aforementioned public policies, under:

a. California Government Code § 12940, *et seq.*;

4 42. As a direct and proximate cause of his wrongful discharge, Plaintiff has suffered
5 and will continue to suffer damages in an amount within the jurisdiction of this court, the exact
6 amount to be proven at trial.

7 43. As a proximate result of the wrongful acts of Defendants, Plaintiff has suffered and
8 continues to suffer actual, consequential, and incidental financial losses, including without
9 limitation, loss of salary and benefits, emotional distress, humiliation, mental anguish, anger, and
10 embarrassment, all in an amount subject to proof at the time of trial.

11 The aforementioned acts of Defendants were willful, wanton, malicious, intentional, oppressive,
12 and despicable, and were done in willful and conscious disregard of the rights of Plaintiff, and
13 were done by managerial agents and employees of Defendants, or with the express knowledge,
14 consent, and ratification of managerial employees of Defendants, and thereby justify the awarding
15 of punitive and exemplary damages in an amount to be determined at the time of trial.

FOURTH CAUSE OF ACTION

INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS

(Against Aramark and DOE 1)

19 44. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
20 full herein.

21 45. DOE 1's discriminatory, harassing, and retaliatory actions against plaintiff
22 constituted severe and outrageous misconduct and caused Plaintiff extreme emotional distress.
23 DOE 1 had the intention of causing and/or recklessly disregarded the probability of causing
24 emotional distress to Plaintiff and did, in fact, cause emotional distress to Plaintiff. DOE 1's
25 misconduct caused Plaintiff severe emotional distress, including, but not limited to, stress,
26 depression, and anxiety. As a proximate result of DOE 1's extreme and outrageous conduct,
27 Plaintiff has suffered and continues to suffer severe emotional distress. Plaintiff has sustained and

1 continues to sustain substantial losses of earnings and other employment benefits as a result of
2 being emotionally distressed.

3 46. As a proximate result of DOE 1's extreme and outrageous conduct, Plaintiff has
4 suffered and continues to suffer humiliation, emotional distress, and mental and physical pain and
5 anguish, all to her damage in a sum according to proof.

6 47. The aforementioned acts of DOE 1 were willful, wanton, malicious, intentional,
7 oppressive, and despicable, and were done in willful and conscious disregard of the rights of
8 Plaintiff, and thereby justify the awarding of punitive and exemplary damages in an amount to be
9 determined at the time of trial.

FIFTH CAUSE OF ACTION

VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.

(Against All Defendants)

13 48. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
14 full herein.

15 49. California Business & Professions Code § 17200 *et seq.* (also referred to herein as
16 the “Unfair Business Practices Act,” “Unfair Competition Law,” or “UCL”), prohibits unfair
17 competition in the form of any unlawful, unfair, or fraudulent business acts or practices.

18 50. California Business & Professions Code § 17204 allows a person injured by the
19 unfair business acts or practices to prosecute a civil action for violation of the UCL.

20 51. Defendants committed acts of unfair competition as defined by the Unfair Business
21 Practices Act, by engaging in the unlawful, unfair and fraudulent business acts and practices
22 described in this Complaint, including, but not limited to:

- b. Violation of Government Code § 12940, *et seq.* pertaining to disability discrimination, failure to prevent discrimination, and retaliation;
 - c. Violation of Labor Code §§ 98.6, 1102.5, 232.5, 6310, and 6311 pertaining to retaliation;
 - d. Wrongfully terminating Plaintiff in violation of the aforementioned public policies;

52. The violations of these laws and regulations, as well as of the fundamental

1 California public policies underlying them, serve as unlawful predicate acts and practices for the
 2 purposes of Business & Professions Code § 17200 *et seq.*

3 53. Additionally, Plaintiff believes, and thereon alleges, that Defendants' unlawfully
 4 discriminatory retaliatory conduct, as discussed above, will continue unless enjoined by this court.
 5 On these grounds, and as Plaintiff has been subjected to Defendants' aforementioned violations of
 6 the FEHA and Labor Code, Plaintiffs also seek redress in the form of injunctive relief.

7 54. The acts and practices alleged above have unlawfully deprived Plaintiff of the
 8 rights due to him under the law while enabling Defendants to gain an unfair competitive advantage
 9 over law-abiding employers and competitors.

10 55. As a direct and proximate result of the aforementioned acts and practices, Plaintiff
 11 has suffered a loss of money and property in the form of wages and benefits that he would have
 12 continued to receive as an employee of Defendants.

13 56. Plaintiff seeks an order of this court awarding restitution, injunctive relief, and all
 14 other legal and equitable relief allowed under Business & Professions Code § 17200 *et seq.*, plus
 15 interest, attorneys' fees and costs pursuant to, *inter alia*, Code of Civil Procedure § 1021.5.

PRAAYER FOR RELIEF

17 WHEREFORE, Plaintiff prays for judgment as follows:

18 57. For all compensatory damages in the form of consequential, and incidental
 19 damages, including but not limited to back pay, front pay, loss of earnings and employee benefits
 20 and damages for emotional distress, according to proof;

21 58. For restitution for unfair competition pursuant to Business & Professions Code
 22 § 17200, *et seq.*, including disgorgement of profits resulting from Defendants' unlawful business
 23 acts and practices, according to proof;

24 59. For general and special damages, according to proof;

25 60. For pre-judgment and post-judgment interest, according to proof;

26 61. For punitive and exemplary damages, according to proof;

27 62. For attorneys' fees, according to proof;

28 63. For costs of suit incurred herein; and

64. For such other relief the court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

DATED: August 15, 2022

SETAREH LAW GROUP

By Jose Maria D. Patino Jr.
SHAUN SETAREH
JOSE MARIA D. PATINO, JR.
MAXIM GORBUNOV
Attorneys for Plaintiff
LAWRENCE WAYNE KELLY JR.

EXHIBIT A



STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency

GAVIN NEWSOM, GOVERNOR

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

August 15, 2022

Maxim Gorbunov
9665 Wilshire Blvd., Suite 430
Beverly Hills, CA 90212

RE: Notice to Complainant's Attorney
DFEH Matter Number: 202208-17901712
Right to Sue: KELLY, Jr. / ARAMARK SERVICES, INC. et al.

Dear Maxim Gorbunov:

Attached is a copy of your complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue.

Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer. You must serve the complaint separately, to all named respondents. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California. A courtesy "Notice of Filing of Discrimination Complaint" is attached for your convenience.

Be advised that the DFEH does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Department of Fair Employment and Housing



STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency

GAVIN NEWSOM, GOVERNOR

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

August 15, 2022

RE: Notice of Filing of Discrimination Complaint

DFEH Matter Number: 202208-17901712

Right to Sue: KELLY, Jr. / ARAMARK SERVICES, INC. et al.

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Department of Fair Employment and Housing (DFEH) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

This matter may qualify for DFEH's Small Employer Family Leave Mediation Pilot Program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in DFEH's free mediation program. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in DFEH's free mediation program. The employee is required to contact the Department's Dispute Resolution Division prior to filing a civil action and must also indicate whether they are requesting mediation. The employee is prohibited from filing a civil action unless the Department does not initiate mediation within the time period specified in section 12945.21, subdivision (b) (4), or until the mediation is complete or is unsuccessful. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from the date the employee contacts the Department regarding the intent to pursue legal action until the mediation is complete or is unsuccessful. You may contact DFEH's Small Employer Family Leave Mediation Pilot Program by emailing DRDOnlinerequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to DFEH is requested or required.

Sincerely,



STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency

GAVIN NEWSOM, GOVERNOR

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfEH.ca.gov

Department of Fair Employment and Housing



STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency

GAVIN NEWSOM, GOVERNOR

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
 (800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

August 15, 2022

LAWRENCE KELLY, Jr.

RE: Notice of Case Closure and Right to Sue

DFEH Matter Number: 202208-17901712

Right to Sue: KELLY, Jr. / ARAMARK SERVICES, INC. et al.

Dear LAWRENCE KELLY, Jr.:

This letter informs you that the above-referenced complaint filed with the Department of Fair Employment and Housing (DFEH) has been closed effective August 15, 2022 because an immediate Right to Sue notice was requested.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

This matter may qualify for DFEH's Small Employer Family Leave Mediation Pilot Program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in DFEH's free mediation program. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in DFEH's free mediation program. The employee is required to contact the Department's Dispute Resolution Division prior to filing a civil action and must also indicate whether they are requesting mediation. The employee is prohibited from filing a civil action unless the Department does not initiate mediation within the time period specified in section 12945.21, subdivision (b) (4), or until the mediation is complete or is unsuccessful. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from the date the employee contacts the Department regarding the intent to pursue legal action until the mediation is complete or is unsuccessful. Contact DFEH's Small Employer Family Leave Mediation Pilot Program by emailing DRDOnlinerequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.



STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency

GAVIN NEWSOM, GOVERNOR

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfEH.ca.gov

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing

1 **COMPLAINT OF EMPLOYMENT DISCRIMINATION**
2 **BEFORE THE STATE OF CALIFORNIA**
3 **DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING**
4 **Under the California Fair Employment and Housing Act**
5 **(Gov. Code, § 12900 et seq.)**

6 **In the Matter of the Complaint of**
7 **LAWRENCE KELLY, Jr.**

DFEH No. 202208-17901712

6 Complainant,

7 **vs.**

8 ARAMARK SERVICES, INC.
9 2400 MARKET ST.
10 Philadelphia, PA 19103

11 Doe 1 Unknown
12 2400 MARKET ST
13 Philadelphia, PA 19103

14 Respondents

15 1. Respondent **ARAMARK SERVICES, INC.** is an employer subject to suit under the California
16 Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

17 2. Complainant is naming **Doe 1 Unknown** individual as Co-Respondent(s).

18 3. Complainant **LAWRENCE KELLY, Jr.**, resides in the City of , State of .

19 4. Complainant alleges that on or about **February 13, 2020**, respondent took the
20 following adverse actions:

21 **Complainant was discriminated against** because of complainant's age (40 and over),
22 association with a member of a protected class and as a result of the discrimination was
23 terminated, laid off, forced to quit, denied hire or promotion, reprimanded, suspended,
24 denied any employment benefit or privilege, denied work opportunities or assignments,
25 denied or forced to transfer.

26 **Additional Complaint Details:** 14. Plaintiff is a 53-year-old man who was hired by
27 Defendants in or around 1988 as a driver. Plaintiff was a hardworking and steadfast
28 employee, who, for over three decades, performed his job duties competently and efficiently,
 within the Defendants' rules, requirements, and policies.

1 15. Plaintiff accrued retirement benefits throughout his employment with Aramark. These
 2 benefits were provided through the Western Conference of Teamsters Pension Trust.

3 Plaintiff had two more years of service before his pension was fully vested and he could
 4 retire.

5 16. At one point in his employment with Defendant, Plaintiff was promoted to a
 6 management position, but upon discovering that accrual of his retirement benefits was
 7 paused due to managers not being eligible for benefits, Plaintiff elected to go back to being
 8 a driver for Defendant.

9 17. On or around February 13, 2020, Plaintiff was called into a room by Doe 1 where two
 10 other persons were waiting. Doe 1 accused Plaintiff of theft and asked the other two persons
 11 to count money from a bag which Doe 1 claimed were from a vending machine Plaintiff
 12 serviced. When the count was complete, Plaintiff asked for details regarding how much
 13 money was missing and from which machine, but Doe 1 was unable to provide him with any
 14 information, instead telling Plaintiff that he doesn't know. Plaintiff asked a few more times,
 15 only to receive the same response. Plaintiff was then escorted by a manager through the
 16 building and sent home and told that Defendant was going to investigate. This was
 17 approximately two weeks before his thirty-second anniversary as an employee of Aramark.
 18 After this incident, Defendants abruptly terminated Plaintiff's employment without previous
 19 notice.

20 18. Before this incident, Plaintiff had never had any allegations of theft or dishonesty in
 21 his over thirty years on the job with Aramark.

22 19. Plaintiff continually asked Defendants for specific details about this wild accusation,
 23 but Defendants refused to provide any information and instead stated that they were going
 24 to conduct an investigation regarding the possible discrepancy.

25 20. He was one of several employees, including his supervisor, who had keys and
 26 access to each machine that was supposedly missing money. Defendants never informed
 27 Plaintiff of the amount of money missing nor of the count made afterwards by investigators
 28 of the money recovered from the machine in question.

29 21. Despite his insistence, Plaintiff was not provided evidence suggesting he was
 30 responsible for any monetary discrepancy in the vending machines under investigation.

31 22. Plaintiff is informed and believes that he was wrongfully terminated on the basis of
 32 his age and in interference with his pension benefits.

1 VERIFICATION

2 I, **Maxim Gorbunov**, am the **Attorney** in the above-entitled complaint. I have read
3 the foregoing complaint and know the contents thereof. The matters alleged are
4 based on information and belief, which I believe to be true.

5 On August 15, 2022, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
Beverly Hills

-3-

Complaint – DFEH No. 202208-17901712

Date Filed: August 15, 2022

**SUMMONS ON FIRST AMENDED COMPLAINT
(CITACION JUDICIAL)**

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

ARAMARK SERVICES, INC, a California Corporation; DOE 1, an individual; and DOES 2 through 50, inclusive

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

LAWRENCE WAYNE KELLY JR., an individual

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): Hayward Hall of Justice

24405 Amador St.

Hayward, CA 94544

CASE NUMBER:
(Número del Caso): 22CV016120

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Shaun Setareh, Esq., 9665 Wilshire Blvd., Suite 430, Beverly Hills, California 90212, (310) 888-7771

DATE:
(Fecha)

Clerk, by _____, Deputy
(Secretario) _____
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify):

under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)

other (specify):

4. by personal delivery on (date):

1 Shaun Setareh (SBN 204514)
2 shaun@setarehlaw.com
3 Jose Maria D. Patino, Jr. (SBN 270194)
4 jose@setarehlaw.com
5 Maxim Gorbunov (SBN 343128)
6 maxim@setarehlaw.com)
7 SETAREH LAW GROUP
8 9665 Wilshire Boulevard, Suite 430
9 Beverly Hills, California 90212
10 Telephone (310) 888-7771
11 Facsimile (310) 888-0109
12
13 Attorneys for Plaintiff
14 LAWRENCE WAYNE KELLY JR.

ELECTRONICALLY FILED
Superior Court of California,
County of Alameda
08/12/2022 at 04:39:39 PM
By: Angela Linhares,
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

LAWRENCE WAYNE KELLY JR., an individual.

Case No.: 22CV016120

COMPLAINT FOR:

1. Age Discrimination (Gov. Code. § 12940, *et seq.*)
 2. Failure to Prevent Discrimination and Harassment (Gov. Code § 12940(k))
 3. Wrongful Termination in Violation of Public Policy;
 4. Intentional Infliction of Emotional Distress
 5. Unfair Competition (Bus. & Prof. Code § 17200, *et seq.*)

DEMAND FOR JURY TRIAL

1 Plaintiff LAWRENCE WAYNE KELLY JR., (hereinafter "Plaintiff") alleges as follows:

2 **INTRODUCTION**

3 1. Plaintiff brings this action against Defendants ARAMARK SERVICES, INC., a
4 California corporation (hereinafter "Aramark"); DOE 1, an individual; and DOES 2 through 50,
5 inclusive (collectively "Defendants") for alleged violations of Government Code section 12940,
6 *et seq.*, and the Business and Professions Code section 17200, *et seq.*

7 2. Based on the allegations herein, Plaintiff seeks general, special, compensatory,
8 actual, consequential, incidental, and punitive damages and interest thereon, attorneys' fees, costs
9 of suit, injunctive relief, and other remedies discussed below.

10 **JURISDICTION AND VENUE**

11 3. This Court has subject matter jurisdiction to hear this case because the Plaintiff is
12 informed and believes that the monetary damages and restitution sought in this complaint for
13 Defendants' conduct exceeds the minimal jurisdictional limits of the Superior Court of the State of
14 California.

15 4. Venue is proper in Alameda pursuant to Code of Civil Procedure sections 395(a)
16 and 395.5 in that liability arose there, because at least some of the transactions that are the subject
17 matter of this Complaint occurred therein and/or each defendant is found, maintains offices,
18 transacts business, and/or has an agent therein.

19 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

20 5. Prior to the initiation of this lawsuit, Plaintiff filed a complaint against each named
21 defendant with the California Department of Fair Employment and Housing (DFEH) pursuant to
22 California Government Code section 12900, *et seq.*, alleging the claims described in this
23 complaint. On August 12, 2022, the DFEH issued a "right to sue" letter. A true and correct copy
24 of the administrative complaint and the "right to sue" letter is attached as Exhibit A. All
25 conditions precedent to the institution of this lawsuit have been fulfilled. This action is filed within
26 one year of the date that the DFEH issued its right to sue letter.

27 ///

28 ///

THE PARTIES

2 6. At all times herein mentioned, and at the time the causes of action arose, Plaintiff
3 LAWRENCE WAYNE KELLY JR., was an individual residing in the State of California, County
4 of San Benito.

5 7. At all times mentioned herein, Defendant ARAMARK SERVICES, INC., a
6 California corporation, was and is doing business in the State of California, County of Alameda.

7 8. At all times mentioned herein, Plaintiff is informed and believes, and based thereon
8 alleges, that Defendant DOE 1, in individual, was an individual residing in the State of California
9 who was employed by Aramark and placed in charge of investigating the workplace vending
10 machine discrepancies attributed to Plaintiff.

11 9. Plaintiff is unaware of the true names and capacities of the defendants sued herein
12 as DOES 1 through 50, inclusive, and for that reason sues these defendants by such fictitious
13 names under Code of Civil Procedure section 474. Plaintiff will file and serve an amendment to
14 this Complaint alleging the true names and capacities of these fictitiously named defendants when
15 such true names and capacities become known to Plaintiff.

16 10. Plaintiff is informed and believes, and based thereon alleges, that each of the
17 fictitiously named defendants is responsible in some manner for, and proximately caused, the
18 harm and damages alleged herein below.

19 11. Hereinafter in this Complaint, unless otherwise specified, reference to a defendant
20 or defendants shall refer to all defendants, and each of them. ARAMARK SERVICES, INC., a
21 California corporation, DOE 1, an individual, and DOES 2 through 50, inclusive, shall hereinafter
22 be collectively referred to as "Defendants."

23 12. Plaintiff is informed and believes, and based thereon alleges, that each of the
24 defendants named herein acted as the employee, agent, spouse, partner, alter-ego, and/or joint-
25 venturer, of each of the other defendants named herein and, in doing the acts and in carrying out
26 the wrongful conduct alleged herein, each of the defendants acted within the scope of its
27 relationship with and with the permission, consent, and ratification of each of the other defendants
28 named herein.

1 13. Plaintiff is informed and believes and thereon allege that Defendants, and each of
2 them, exercised control over the wages, hours or working conditions of Plaintiff, or suffered or
3 permitted Plaintiff, to work, or engaged, thereby creating a common law employment relationship,
4 with Plaintiff. Therefore, Defendants, and each of them, employed or jointly employed Plaintiff.

FACTUAL BACKGROUND

6 14. Plaintiff is a 53-year-old man who was hired by Defendants in or around 1988 as a
7 driver. Plaintiff was a hardworking and steadfast employee, who, for over three decades,
8 performed his job duties competently and efficiently, within the Defendants' rules, requirements,
9 and policies.

10 15. Plaintiff accrued retirement benefits throughout his employment with Aramark.
11 These benefits were provided through the Western Conference of Teamsters Pension Trust.
12 Plaintiff had two more years of service before his pension was fully vested and he could retire.

13 16. At one point in his employment with Defendant, Plaintiff was promoted to a
14 management position, but upon discovering that accrual of his retirement benefits was paused due
15 to managers not being eligible for benefits, Plaintiff elected to go back to being a driver for
16 Defendant.

17 17. On or around February 13, 2020, Plaintiff was called into a room by Doe 1 where
18 two other persons were waiting. Doe 1 accused Plaintiff of theft and asked the other two persons
19 to count money from a bag which Doe 1 claimed were from a vending machine Plaintiff serviced.
20 When the count was complete, Plaintiff asked for details regarding how much money was missing
21 and from which machine, but Doe 1 was unable to provide him with any information, instead
22 telling Plaintiff that he doesn't know. Plaintiff asked a few more times, only to receive the same
23 response. Plaintiff was then escorted by a manager through the building and sent home and told
24 that Defendant was going to investigate. This was approximately two weeks before his thirty-
25 second anniversary as an employee of Aramark. After this incident, Defendants abruptly
26 terminated Plaintiff's employment without previous notice.

27 18. Before this incident, Plaintiff had never had any allegations of theft or dishonesty
28 in his over thirty years on the job with Aramark.

1 19. Plaintiff continually asked Defendants for specific details about this wild
2 accusation, but Defendants refused to provide any information and instead stated that they were
3 going to conduct an investigation regarding the possible discrepancy.

4 20. He was one of several employees, including his supervisor, who had keys and
5 access to each machine that was supposedly missing money. Defendants never informed Plaintiff
6 of the amount of money missing nor of the count made afterwards by investigators of the money
7 recovered from the machine in question.

8 21. Despite his insistence, Plaintiff was not provided evidence suggesting he was
9 responsible for any monetary discrepancy in the vending machines under investigation.

10 22. Plaintiff is informed and believes that he was wrongfully terminated on the basis of
11 his age and in interference with his pension benefits.

12 **FIRST CAUSE OF ACTION**

13 **AGE DISCRIMINATION IN VIOLATION OF GOV. CODE § 12940, ET SEQ.**

14 **(Against All Defendants)**

15 23. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
16 full herein.

17 24. At all times herein mentioned the California Fair Employment and Housing Act,
18 California Government Code Section 12940 *et seq.* ("FEHA") was in full force and effect and was
19 binding on Defendants, who each regularly employed five or more persons.

20 25. During Plaintiff's employment with Defendants, Defendants, through its
21 supervisors, engaged in actions that had a negative impact on the treatment of employees who
22 were more than 40 years old. Specifically, Defendants discharged older employees with greater
23 frequency than younger employees, hired fewer employees who were older than 40, and gave
24 better jobs and benefits to younger employees. Defendants had a pattern and practice of such
25 unlawful hiring and firing practices.

26 26. Plaintiff was a qualified employee at the time his employment was terminated, he
27 was more than 40 years old, and based on information and belief Plaintiff alleges that he was
28 discriminated against on the basis of his age.

27. On the basis of the above, Plaintiff believes and alleges that his age was a substantial motivating factor in Defendants' termination of his employment.

28. As a direct and proximate cause of Defendants' conduct, Plaintiff has suffered and will continue to suffer damages in an amount within the jurisdiction of this court, the exact amount to be proven at trial.

29. As a further direct and legal result of the acts and conduct of Defendants, Plaintiff has been caused to, and did, suffer and continues to suffer severe emotional and mental distress and anguish, humiliation, embarrassment, anger, shock, pain, discomfort, and anxiety, all of which is substantial and enduring. The exact nature and extent of these injuries is presently unknown to Plaintiff, who will pray leave of court to assert the same when they are ascertained.

30. The aforementioned acts of Defendants were willful, wanton, malicious, intentional, oppressive, and despicable, and were done in willful and conscious disregard of the rights of Plaintiff, and were done by managerial agents and employees of Defendants, or with the express knowledge, consent, and ratification of managerial employees of Defendants, and thereby justify the awarding of punitive and exemplary damages in an amount to be determined at the time of trial.

SECOND CAUSE OF ACTION

FAILURE TO PREVENT DISCRIMINATION AND HARASSMENT IN VIOLATION OF

GOV. CODE § 12940(k)

(Against All Defendants)

31. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in full herein.

32. At all times mentioned herein, California Government Code § 12940 *et seq.* was in full force and effect and binding on Defendants. These sections require Defendants to take reasonable steps to prevent discrimination from occurring.

33. As alleged herein, Plaintiff suffered unlawful discrimination and harassment at the hands of Defendants.

34. Defendants, and each of them, failed to take all reasonable steps to prevent such

1 harassment and discrimination in violation of Government Code § 12940(k).

2 35. Defendants failed to take appropriate and/or reasonable steps to train and/or
3 monitor its employees, supervisors and/or managers regarding disability discrimination by failing
4 to enforce a policy against unlawful discrimination, and failing to take prompt and appropriate
5 disciplinary action against the perpetrators of discrimination.

6 36. As a direct and proximate result of Defendants' failure to take all reasonable steps
7 to prevent harassment and discrimination, Plaintiff has suffered and will continue to suffer
8 damages in an amount within the jurisdiction of this Court, the exact amount to be proven at trial.
9 Such damages include loss of salary and other valuable employment benefits, prejudgment interest
10 and interest on the sum of damages at the legal rate, and other consequential damages, including
11 damages for shame, humiliation, mental anguish, and emotional distress caused by the conduct of
12 Defendants and each of them.

13 37. In addition, pursuant to Government Code § 12965(b), Plaintiff is entitled to his
14 attorneys' fees in prosecuting this lawsuit.

15 38. Because the wrongful acts against Plaintiff were carried out, authorized, or ratified
16 by Defendants' directors, officers and/or managing agents, acting with malice, oppression or
17 fraud, or were deliberate, willful, and in conscious disregard of the probability of causing injury to
18 Plaintiff, as reflected by the actions as described earlier in this Complaint, Plaintiff seeks punitive
19 damages against Defendants, and each of them, in order to deter them from such and similar
20 conduct in the future.

THIRD CAUSE OF ACTION

WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

(Against All Defendants)

24 39. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
25 full herein.

26 40. Plaintiff's termination was wrongful in that it violated the fundamental public
27 policies of California that prohibit discrimination, harassment, and retaliation on the basis of: age
28 as discussed above.

41. Defendants discharged Plaintiff in violation of the aforementioned public policies, under:

a. California Government Code § 12940, *et seq.*;

4 42. As a direct and proximate cause of his wrongful discharge, Plaintiff has suffered
5 and will continue to suffer damages in an amount within the jurisdiction of this court, the exact
6 amount to be proven at trial.

7 43. As a proximate result of the wrongful acts of Defendants, Plaintiff has suffered and
8 continues to suffer actual, consequential, and incidental financial losses, including without
9 limitation, loss of salary and benefits, emotional distress, humiliation, mental anguish, anger, and
10 embarrassment, all in an amount subject to proof at the time of trial.

11 The aforementioned acts of Defendants were willful, wanton, malicious, intentional, oppressive,
12 and despicable, and were done in willful and conscious disregard of the rights of Plaintiff, and
13 were done by managerial agents and employees of Defendants, or with the express knowledge,
14 consent, and ratification of managerial employees of Defendants, and thereby justify the awarding
15 of punitive and exemplary damages in an amount to be determined at the time of trial.

FOURTH CAUSE OF ACTION

INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS

(Against Aramark and DOE 1)

19 44. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
20 full herein.

21 45. DOE 1's discriminatory, harassing, and retaliatory actions against plaintiff
22 constituted severe and outrageous misconduct and caused Plaintiff extreme emotional distress.
23 DOE 1 had the intention of causing and/or recklessly disregarded the probability of causing
24 emotional distress to Plaintiff and did, in fact, cause emotional distress to Plaintiff. DOE 1's
25 misconduct caused Plaintiff severe emotional distress, including, but not limited to, stress,
26 depression, and anxiety. As a proximate result of DOE 1's extreme and outrageous conduct,
27 Plaintiff has suffered and continues to suffer severe emotional distress. Plaintiff has sustained an

1 continues to sustain substantial losses of earnings and other employment benefits as a result of
2 being emotionally distressed.

3 46. As a proximate result of DOE 1's extreme and outrageous conduct, Plaintiff has
4 suffered and continues to suffer humiliation, emotional distress, and mental and physical pain and
5 anguish, all to her damage in a sum according to proof.

6 47. The aforementioned acts of DOE 1 were willful, wanton, malicious, intentional,
7 oppressive, and despicable, and were done in willful and conscious disregard of the rights of
8 Plaintiff, and thereby justify the awarding of punitive and exemplary damages in an amount to be
9 determined at the time of trial.

FIFTH CAUSE OF ACTION

VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.

(Against All Defendants)

13 48. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
14 full herein.

15 49. California Business & Professions Code § 17200 *et seq.* (also referred to herein as
16 the “Unfair Business Practices Act,” “Unfair Competition Law,” or “UCL”), prohibits unfair
17 competition in the form of any unlawful, unfair, or fraudulent business acts or practices.

18 50. California Business & Professions Code § 17204 allows a person injured by the
19 unfair business acts or practices to prosecute a civil action for violation of the UCL.

20 51. Defendants committed acts of unfair competition as defined by the Unfair Business
21 Practices Act, by engaging in the unlawful, unfair and fraudulent business acts and practices
22 described in this Complaint, including, but not limited to:

- b. Violation of Government Code § 12940, *et seq.* pertaining to disability discrimination, failure to prevent discrimination, and retaliation;
 - c. Violation of Labor Code §§ 98.6, 1102.5, 232.5, 6310, and 6311 pertaining to retaliation;
 - d. Wrongfully terminating Plaintiff in violation of the aforementioned public policies;

52. The violations of these laws and regulations, as well as of the fundamental

1 California public policies underlying them, serve as unlawful predicate acts and practices for the
2 purposes of Business & Professions Code § 17200 *et seq.*

3 53. Additionally, Plaintiff believes, and thereon alleges, that Defendants' unlawfully
4 discriminatory retaliatory conduct, as discussed above, will continue unless enjoined by this court.
5 On these grounds, and as Plaintiff has been subjected to Defendants' aforementioned violations of
6 the FEHA and Labor Code, Plaintiffs also seek redress in the form of injunctive relief.

7 54. The acts and practices alleged above have unlawfully deprived Plaintiff of the
8 rights due to him under the law while enabling Defendants to gain an unfair competitive advantage
9 over law-abiding employers and competitors.

10 55. As a direct and proximate result of the aforementioned acts and practices, Plaintiff
11 has suffered a loss of money and property in the form of wages and benefits that he would have
12 continued to receive as an employee of Defendants.

13 56. Plaintiff seeks an order of this court awarding restitution, injunctive relief, and all
14 other legal and equitable relief allowed under Business & Professions Code § 17200 *et seq.*, plus
15 interest, attorneys' fees and costs pursuant to, *inter alia*, Code of Civil Procedure § 1021.5.

PRAYER FOR RELIEF

17 WHEREFORE, Plaintiff prays for judgment as follows:

18 57. For all compensatory damages in the form of consequential, and incidental
19 damages, including but not limited to back pay, front pay, loss of earnings and employee benefits
20 and damages for emotional distress, according to proof;

58. For restitution for unfair competition pursuant to Business & Professions Code
§ 17200, *et seq.*, including disgorgement of profits resulting from Defendants' unlawful business
acts and practices, according to proof;

24 59. For general and special damages, according to proof;

25 60. For pre-judgment and post-judgment interest, according to proof;

26 61. For punitive and exemplary damages, according to proof;

27 62. For attorneys' fees, according to proof;

28 63. For costs of suit incurred herein; and

1 64. For such other relief the court may deem just and proper.
2
3
4
5

DEMAND FOR JURY TRIAL

6 Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: August 12, 2022

SETAREH LAW GROUP

By _____

SHAUN SETAREH
JOSE MARIA D. PATINO, JR.
MAXIM GORBUNOV
Attorneys for Plaintiff
LAWRENCE WAYNE KELLY JR.,

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
 Shaun Setareh (SBN 204514) Jose Maria D. Patino Jr. (SBN 270194)
SETAREH LAW GROUP
 9665 Wilshire Blvd., Suite 430
 Beverly Hills, California 90212
 TELEPHONE NO.: (310) 888-7771 FAX NO.: (310) 888-0109
 ATTORNEY FOR (Name): Plaintiff, Lawrence Wayne Kelly Jr.

FOR COURT USE ONLY

ELECTRONICALLY FILED
 Superior Court of California,
 County of Alameda
08/12/2022 at 04:39:39 PM
 By: Angela Linhares,
 Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda
 STREET ADDRESS: 24405 Amador St.
 MAILING ADDRESS: 24405 Amador St.
 CITY AND ZIP CODE: Hayward, CA 94544
 BRANCH NAME: Hayward Hall of Justice

CASE NAME:
Kelly v. Aramark Services, Inc.

CIVIL CASE COVER SHEET		Complex Case Designation	CASE NUMBER:
<input checked="" type="checkbox"/> Unlimited <input type="checkbox"/> Limited (Amount demanded exceeds \$25,000) (Amount demanded is \$25,000 or less)		<input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	22CV016120
		JUDGE:	
		DEPT:	

Items 1–6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23)	Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26)	Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20)
Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35)	Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38)	Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42)
Employment <input checked="" type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. Large number of separately represented parties
- b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
- c. Substantial amount of documentary evidence
- d. Large number of witnesses
- e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- f. Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): Five

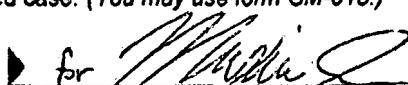
5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: August 12, 2022

Shaun Setareh

(TYPE OR PRINT NAME)

for 

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

EXHIBIT B

1 MORGAN, LEWIS & BOCKIUS LLP
Eric Meckley, Bar No. 168181
2 Sarah Zenewicz, Bar No. 258068
One Market
3 Spear Street Tower
San Francisco, CA 94105-1596
4 Tel: +1.415.442.1000
Fax: +1.415.442.1001
5 eric.meckley@morganlewis.com
sarah.zenewicz@morganlewis.com

6 MORGAN, LEWIS & BOCKIUS LLP
7 Claire M. Lesikar, Bar No. 311180
1400 Page Mill Rd.
8 Palo Alto, CA 94304
Tel: +1.650.843.4000
9 Fax: +1.650.843.4001
claire.lesikar@morganlewis.com

10 Attorneys for Defendant
11 ARAMARK SERVICES, INC.

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF ALAMEDA

15
16 LAWRENCE WAYNE KELLY JR., an
individual,

17 Plaintiff,

18 vs.

19 ARAMARK SERVICES, INC., a California
20 Corporation; DOE 1, an individual; and DOES
21 2 through 50, inclusive,

22 Defendants.

Case No. 22CV016120

**DEFENDANT ARAMARK SERVICES,
INC.'S ANSWER TO COMPLAINT
FOR DAMAGES**

Complaint Filed: August 12, 2022

23 Defendant ARAMARK SERVICES, INC. ("Defendant") by and through its undersigned
24 counsel, hereby answers the Complaint ("Complaint") filed by Plaintiff LAWRENCE WAYNE
25 KELLY JR. ("Plaintiff") as follows:

GENERAL DENIAL

26 Pursuant to California Code of Civil Procedure Section 431.30(d), Defendant denies,
27 generally and specifically, each and every allegation in the unverified Complaint. Defendant

further generally and specifically denies that Plaintiff has been damaged in the sums alleged, or any other sum, or at all, by reason of any act or omission on the part of Defendant or any of its agents, servants, employees, or representatives. Defendant further denies, generally and specifically, that Plaintiff is entitled to general, compensatory, punitive, or other damages, in any amount by reason of any act or omission on the part of Defendant or on the part of its agents, servants, employees, or representatives.

AFFIRMATIVE DEFENSES

8 Defendant has not completed its investigation of the facts of this case, has not completed
9 discovery in this matter, and has not completed its preparation for trial. The defenses asserted
10 herein are based on Defendant's knowledge, information, and belief at this time. Defendant
11 specifically reserves the right to modify, amend, or supplement any defense contained herein at
12 any time. Without conceding that it bears the burden of proof or persuasion as to any one of
13 them, Defendant alleges the following separate defenses to the Complaint:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

16 1. Plaintiff's Complaint, and each claim contained therein, fails to state facts sufficient
17 to constitute any cause of action or to set forth a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

20 2. If Plaintiff sustained any damages by reason of the allegations in the Complaint, which
21 are categorically denied by Defendant, then Plaintiff may not recover for any such damages because,
22 by his own acts and/or omissions, Plaintiff has failed to timely and properly to mitigate those
23 damages.

THIRD AFFIRMATIVE DEFENSE

(Unclean Hands)

26 ||| 3. Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

FOURTH AFFIRMATIVE DEFENSE

(No Basis for Award of Punitive Damages)

4. Plaintiff's allegations of each cause of action, whether considered separately or in any combination, fail to state facts sufficient to support an award of punitive damages against Defendant.

FIFTH AFFIRMATIVE DEFENSE

(Punitive Damages Unconstitutional)

5. An award of punitive damages is an unconstitutional denial of Defendant's right to due process and/or equal protection under the Fifth and Fourteenth Amendments to the United States Constitution, the excessive fines clause of the Eighth Amendment to the United States Constitution, and corresponding provisions of the Constitution of the State of California, including Articles I and IV.

SIXTH AFFIRMATIVE DEFENSE

(Offset)

6. Even if the applicable Workers' Compensation laws do not provide the exclusive remedy for Plaintiff's claims, Defendant is entitled to an offset of any benefits Plaintiff receives or has received from workers' compensation or any employee benefit plan for injuries or damages alleged in his Complaint against any award of damages to Plaintiff in this action, consistent with the common law doctrine of offset and the doctrine prohibiting double recovery set forth under *Witt v. Jackson*, 57 Cal. 2d 57 (1961) and its progeny.

SEVENTH AFFIRMATIVE DEFENSE

(Legitimate, Non-Discriminatory Reasons)

7. Any and all employment actions taken with respect to Plaintiff were not based on age, involvement in any protected activity, or any other improper or illegal consideration, but rather based on one or more legitimate, non-discriminatory and non-retaliatory reasons.

EIGHTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

8. Plaintiff's claims are barred, in whole or in part, and/or such claims of some of the putative class and/or representative action members that Plaintiff seeks to represent are barred in

whole or in part by the applicable statutes of limitations, including but not limited to Cal. Civ. Proc. Code § 335.1.

NINTH AFFIRMATIVE DEFENSE

(Workers' Compensation Exclusive Remedy)

5 9. To the extent Plaintiff seeks recovery for alleged physical and/or emotional injury
6 based on alleged employment or termination related conduct which neither contravenes fundamental
7 California public policy nor exceeds the risks inherent in the employment relationship (nor violates a
8 California statute providing recovery for emotional distress), such recovery is barred by California
9 Labor Code sections 3601 and 3602, which provide that the exclusive remedy for these alleged
10 injuries is an action or a claim under the Workers' Compensation Act.

Prayer

WHEREFORE, Defendant prays for judgment as follows:

13 1. That Plaintiff takes nothing by reason of the Complaint on file herein, and that the
14 same be dismissed;

15 2. That judgment be entered in favor of Defendant and against Plaintiff;

16 3. That Defendant be awarded its costs of suit;

17 4. That Defendant be awarded its attorneys' fees according to proof; and

18 5. That the Court award Defendant such other and further relief as the Court may
19 deem proper.

Dated: September 14, 2022

MORGAN, LEWIS & BOCKIUS LLP

By

Eric Meckley
Sarah Zenewicz
Claire Lesikar
Attorneys for Defendant
ARAMARK SERVICES, INC.

PROOF OF SERVICE

I, Joseph Ding, declare:

I am a citizen of the United States and employed in Santa Clara County, California. I am over the age of eighteen years and not a party to the within entitled action. My business address is 1400 Page Mill Road, Palo Alto, CA 94304. On September 14, 2022, I served a copy of the within document(s):

**DEFENDANT ARAMARK SERVICES, INC.'S ANSWER TO
COMPLAINT FOR DAMAGES**

- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Palo Alto, California addressed as set forth below.

Shaun Setareh
Jose Maria D. Patino, Jr.
Maxim Gorbunov
SETAREH LAW GROUP
9665 Wilshire Boulevard, Suite 430
Beverly Hills, California 90212
shaun@setarehlaw.com
jose@setarehlaw.com
maxim@setarehlaw.com

*Attorneys for Plaintiff
Lawrence Wayne Kelly Jr.,*

Executed on September 14, 2022, at Palo Alto, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Joseph Ding